

REMARKS

Claims 1-29 are pending.

Obviousness-Type Double Patenting

Claims 1 and 15-17 are provisionally rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 21-24 of co-pending application no. 10/585,757 (hereinafter "the '757 application"). Applicants respectfully traverse the rejection.

As noted in the paragraph bridging pages 2-3 of the outstanding Office Action, the Examiner is aware that claims 21-24 of the '747 application are silent with respect to the use of the polyaminoquinoxaline in an energy storage device, as presently claimed. In order to cure this deficiency, the Examiner states: "However, specification ([0050]) discloses those polyaminoquinoxaline are used to make electrodes." See last full sentence of page 2 of Office Action.

According to MPEP 804, the specification can only be used in an obviousness-type double patenting rejection in certain circumstances, and here, the Examiner is using the specification improperly. It is appropriate for the Examiner to use the specification as a dictionary to define a term in the patent claim. However, here, the Examiner is using the specification as prior art. Using the specification as prior art is forbidden.

As such, the obviousness-type double patenting rejection is improper. Reconsideration and withdrawal of the rejection is respectfully requested.

Prior Art Based Issues

The following prior art based rejections are pending:

(A) Claim 1-20 rejected under 35 U.S.C. 102(e) as being anticipated by Kasai et al. (US 200900301760; and

(B) Claim 1-29 rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasaki et al. (EP 1361244, listed on IDS) in view of Kasai et al. (US 20090030176).

Applicants respectfully traverse the rejections.

Applicants note that the Examiner is relying on Kasai et al. based upon its availability under 35 U.S.C. 102(e). However, Kasai et al. is not available under 35 U.S.C. 102(e). Kasai et al. is the publication of a National Phase application which is based upon PCT/JP05/00209. PCT/JP05/00209 published as WO 2005/068439 in the Japanese language. Since WO 2005/068439 published in a language other than English, Kasai et al. is not available under 35 USC 102(e).

In view of the fact that Nagasaki et al. cannot render the presently claimed invention obvious alone, without Kasai et al., both rejections are not tenable. Reconsideration and withdrawal of the rejections are respectfully requested.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq., Reg. No. 43,575, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Application No. 10/588,232
Amendment dated October 30, 2009
Reply to Office Action of August 20, 2009


Docket No.: 0171-1294PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated:

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Respectfully submitted,

By  #43575

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